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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Lyndsay Williams

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EXAMINER

BERTRAM, ERIC D

ART UNIT

PAPER NUMBER

3766

NOTIFICATION DATE

DELIVERY MODE

01/19/2012

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/790,602	Applicant(s) WILLIAMS ET AL.	
	Examiner Eric D. Bertram	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,4,7-9,13-17,20,21,29-33 and 44-51 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,4,7-9,13-17,20,21,29-33 and 44-51 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/27/2011 (2)</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/9/2011 have been fully considered but they are not persuasive.
2. Regarding claim 1, applicant argues that Ishibashi teaches changing an operation mode and not sending a signal to capture an image. However, as pointed out by the applicant, Col. 4, lines 48-49 of Ishibashi clearly discloses that "AFTER the operation mode is set, a SHOOTING INSTRUCTION is outputted to the video camera circuit 6" (emphasis added). Applicant tries to argue that the "shooting instruction" is equivalent to "setting the operation mode" and points to Col. 4, lines 37-47. However, that is not what that paragraph states. That paragraph describes the setting of the operation mode after which a separate shooting instruction is sent out, as is clearly stated in Col. 4, lines 48-49. Ishibashi does not disclose that the shooting instruction is equivalent to setting an operation mode and instead clearly recites them as separate steps, both of which are automatically triggered in response to a detected change in ambient conditions. To fit the features of the claim, the "shooting instruction is outputted to the video camera circuit" is considered equivalent to "sending a signal to a shutter control line."
3. Applicant's arguments with respect to the rejections of claims 17, 32 and 33 under 35 USC 102 and/or 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 USC 112, first paragraph.

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4. Based on the amendments to claim 32, the 35 USC 101 rejections are withdrawn.

Information Disclosure Statement

5. The information disclosure statements (IDS) submitted on 10/27/2011 were filed in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 17, 20, 21, 29-33 and 45-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, independent claims 17, 32 and 33 describe a very intricate method, or controller configured to, monitor ambient temperature, ambient light level and ambient infrared radiation concurrently and then detecting a capture condition by comparing changes of all of these ambient conditions to threshold values. The applicant pointed to figure 3, page 7, lines 7-14 and page 9, lines -14 as support for these limitations. However, while these disclosures recite or show that temperature sensors, light sensors and radiation sensors may be physically incorporated on the camera, none of these recited

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passages disclose how the controller functions with these three specific ambient conditions to capture an image. There is no specific discussion of how these three specific ambient conditions would be used together as recited in the claimed method, specifically in combination with the recited comparison of acceleration to determine a stable condition. The claims seem to recite a combination of embodiments found in the specification that is not described with enough detail or specificity to support claims 17, 32 and 33 as currently amended. The dependent claims lack support by their association.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1, 4, 8, 9, 15, 44, 50 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson (US 4,901,096) in view of Ishibashi (US 6,558,050).

12. Regarding claims 1, 8, 9, 44 and 51, Lemelson discloses a portable recall device 10 configured to be carried by a user (read as a wearer), which includes a camera 10A (see figure 1 and Col. 1, lines 8-12). Lemelson further discloses an accelerometer 16 operably connected to the camera that will only allow capture of an image if a stable condition is detected (Col. 3, lines 12-29). If the movement of the accelerometer exceeds a predetermined threshold, an image will not be captured. Lemelson further discloses a plurality of environmental sensors that sense multiple ambient conditions, including ambient light and distances (Col. 3, lines 5-11). Only after the device has become stable, i.e., the acceleration is below a threshold, is the camera triggered to open its shutter and capture an image. However, Lemelson is silent as to using ambient conditions to determine whether to capture an image or not.

13. Attention is directed to the secondary reference of Ishibashi, which discloses a portable recall device 1 that is configured to be carried by a wearer as shown in figure 1. The device includes a camera, as well as a three dimensional head orientation detecting unit 4 (Col. 2, lines 30-56). The device also includes a plurality of ambient

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condition sensors that detect conditions external to the camera, including changes in temperature, sound, pulse rate, perspiration, blood pressure (see figure 4 and Col. 2, lines 57-60 and Col. 4, lines 21-36). If a change in one or more of these ambient conditions is detected and is followed by the detection of a stable head orientation by the head orientation detecting unit at step #50, then a shooting instruction is automatically outputted to the video camera circuit, which is considered equivalent to "sending a signal to a shutter control line." (Col. 4, lines 48-49). Therefore, Ishibashi discloses that using the change in ambient conditions as a capture condition for a camera is old and well known in the art, and the incorporation of this feature in the analogous art of Lemelson would have been obvious to one of ordinary skill in the art at the time of the applicant's invention in order to automatically record information useful to the wearer (Col. 1, lines 35-61). .

14. Regarding claim 4, ambient sounds will only be recorded if ambient sounds are present and detected (Col. 3, lines 15-18).

15. Regarding claim 15, the capture of the image will be delayed until the stable condition is detected.

16. Regarding claim 50, a user will necessarily, or at least obviously, play back and view the captured images and the images will necessarily aid a person in remembering the activity in the image.

17. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and Ishibashi in view of Yoshihiro et al. (JP 2000-196934, hereinafter Yoshihiro; paragraph references are to the English translation).

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18. As described above, Lemelson and Ishibashi disclose utilizing environmental sensors to detect ambient conditions, including ambient light. As modified by Ishibashi, Lemelson will capture images based on detected changes in ambient conditions. However, neither Lemelson nor Ishibashi specifically discloses detecting a change in ambient light to determine whether to capture an image. Attention is directed to the secondary reference of Yoshihiro, which discloses a digital media player shown in figure 1 which includes a digital camera 100 that stores digital media in flash memory 50 and displays digital media on LCD display 40 (par. 0017, 0020, 0026-0028). An environmental sensor detects the ambient light, and when a change in the ambient light is above a first threshold, a controller causes capture of an image. If the change in ambient light is not above a first threshold, then no image is captured (par. 0040-0042 and abstract). Therefore, Yoshihiro discloses that using the change in ambient light as a capture condition for a camera is old and well known in the art, and the incorporation of this feature in the analogous art of Lemelson would have been obvious to one of ordinary skill in the art at the time of the applicant's invention in order to automatically record information useful to the wearer.

19. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and Ishibashi in view of Grosvenor et al. (US 2003/0025798, hereinafter Grosvenor). Lemelson, as described above, discloses the applicant's basic invention, including the use of an accelerometer to detect motion of a user and a camera held by the user. However, Lemelson is silent as to using a plurality of accelerometers or a gyroscope to detect the motion. While the use of gyroscopes and/or accelerometers

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are notoriously old and well known in the art for detecting rotational/angular movement of an object, attention is directed to the secondary reference of Grosvenor, which discloses the use of one or more gyroscopes or accelerometers to measure movement of a camera that is attached to a user (par. 0068). Specifically, Grosvenor discloses the use of a plurality of accelerometers for detecting rotation along three axes (par. 0069). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Lemelson by using at least one gyroscope or a plurality of accelerometers to detect angular/rotational movement since Grosvenor demonstrates that they would be fully capable of detecting the motion of the user and the camera held by the user, which would help guarantee a stable condition, as required by Lemelson.

20. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and Ishibashi in view of Moultrie, Jr. (US 2002/0159770, hereinafter Moultrie). Lemelson, as described and modified above, discloses the applicant's basic invention including using ambient temperature to capture an image. However, Lemelson is silent as to detecting a change in the signal from a passive infrared detector triggered by heat from a person in the proximity of the camera. Attention is directed to the secondary reference of Moultrie, which discloses a camera that is activated by detecting a change in the signal from a passive infrared detector triggered by heat from an animal in the proximity of the camera (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art to modify the camera of Lemelson by adding capture condition detection with an infrared sensor as taught by Moultrie in order to make the system

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automatic and allow the user to take images of interest without having to be with the camera.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is (571)272-3446. The examiner can normally be reached on Monday-Friday from 10-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric D. Bertram/
Primary Examiner, Art Unit 3766